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SECTION 27383**

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California Housing Finance Agency
Office of General Counsel
P.O. Box 4034
Sacramento, CA 95812-4034

(Space above this line for Recorder's use)

CALIFORNIA HOUSING FINANCE AGENCY

**CONSTRUCTION DEED OF TRUST WITH ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

[Leasehold]

CalHFA DEVELOPMENT NO. _____

(Construction/Permanent Financing)

This Deed of Trust is made on _____, 2006 for informational purposes, by _____, a California _____, as Trustor (the "Borrower"), to _____ (the "Trustee"), whose business address is _____ for the benefit of the California Housing Finance Agency, a public instrumentality and a political subdivision of the State of California, as beneficiary (the "Agency"), whose principal office is at 1415 L Street, Suite 500, Sacramento, California 95814.

1. BORROWER HEREBY IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to Trustee in trust, with power of sale and right of entry and possession, all of Borrower's right, title and interest now held or hereafter acquired in and to the following: (a) all of that certain real property located in the County of _____, State of California, commonly known as _____ Project, _____ (address) _____, California _____ (zip) _____ and described in **Exhibit A** (attached) which is incorporated herein by this reference; and (b) all buildings, improvements and fixtures now or hereafter erected thereon, and all appurtenances, easements, and articles of property now or hereafter affixed to, placed upon or used in connection with such real property and owned by Borrower or in which Borrower has an interest, together with all additions to, substitutions for, changes in or replacements of the whole or any part of said articles of property (all of which real and personal property described in subparagraphs 1(a) and 1(b) are hereinafter referred to as the "Property"); all of which are hereby pledged and assigned, transferred, and set over unto Trustee, and for purposes of this Deed of Trust declared to be part of the real property; provided, however, that furniture and other personal property of tenants of dwelling units in the buildings now or hereafter situated on said real property are not intended to be included within such definition of Property or subject to this Deed of Trust except to the extent of Borrower's interest therein.

**2. BORROWER HEREBY ABSOLUTELY, UNCONDITIONALLY
AND IRREVOCABLY ASSIGNS TO THE AGENCY:**

(a) All rents, royalties, issues, accounts and profits of or relating to the Property and all of Borrower's interest under all leases, subleases, rental agreements and other contracts and occupancy agreements relating to use and possession for the purposes and upon the terms and conditions hereinafter set forth. This assignment is absolute, primary and direct and is not intended to be a separate or secondary pledge, or other form of additional security, and no further act or step is or shall be required of the Agency to perfect this assignment. Notwithstanding the foregoing, the Agency confers upon the Borrower a license to collect and retain the rents, issues and profits of the Property as they become due and payable until an Event of Default (hereinafter defined), upon the occurrence of which said license shall be automatically revoked. This assignment shall not impose upon the Agency any duty to cause the Property to produce rents nor shall the Agency be deemed to be a mortgagee in possession by reason thereof for any purpose;

(b) All machinery, equipment, engines, appliances and fixtures for generating or distributing air, water, heat, gas, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of furniture and installations, landscaping, landscaping equipment, shelving, lockers, partitions, doorsteps, vaults, motors, elevators, dumb-waiters, awnings, window shades, venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm systems, drapery rods and brackets, mirrors, mantels, screens, linoleum, carpets and carpeting, plumbing, bathtubs, sinks, basins, pipes, ice-boxes, refrigerators, heating units, stoves, ovens, ranges, laundry equipment, fixtures and furnishings and communication systems located on or off certain real property, the specific enumerations herein not excluding the general, now or hereafter affixed to, placed upon or used in connection with the operation of the Property and owned by Borrower or in which Borrower has an interest, together with all additions to, substitutions for, changes in or replacements of the whole or any part of said articles of property and together with all proceeds of any fire insurance policy or of any policy insuring the Property against perils and together with all awards made in eminent domain proceedings and/or proceeds by reason of purchase in lieu thereof; all of the Borrower's right, title and interest in and to any lease governing furniture, equipment and other personal property of any kind located on and used in connection with the Property; all accounts held by Borrower on behalf of the Property including but not limited to the Development Account and tenant security deposit account; all reserve accounts of any kind maintained with or by the Agency with respect to the Property; and all building materials, machinery and appliances acquired with proceeds of the secured obligations and held or stockpiled on or off the above-mentioned real property for incorporation into the Property;

(c) All contract rights of Borrower relating to the Property, and all rights of payment to Borrower related to the Property, including, but not limited to, payments under any Housing Assistance Payment Contract with the Department of Housing and Urban Development ("HUD"), if any, or other subsidy payments, if any, from HUD or any other federal, state or local government agency;

(d) All rights of Borrower under the Construction Contract and Architect's Agreement (each as defined in the Loan Agreement between Borrower and Agency) and any management agreement with respect to the Property; all rights conveyed to the Agency by the Borrower in any Assignment of Construction Contract, Assignment of Architectural Agreements, Engineer's Contract and Plans and Specifications and Assignment of Management Contract as additional security for Borrower's performance pursuant to the terms of the Loan Documents; and

(e) All Borrower's rights in commitments for permanent financing of the Property.

3. THE ABOVE GRANT, TRANSFER, AND ASSIGNMENTS ARE FOR THE PURPOSE OF SECURING:

(a) Payment of the indebtedness evidenced by that certain promissory note entitled “Promissory Note, Construction and Permanent Loan, CalHFA Development No. _____” (the “Note”) of the Borrower in the face amount of _____ Dollars (\$_____), together with interest on such indebtedness according to the terms of the Note, and any and all amendments, modifications, extensions or renewals of the Note and the indebtedness and all other sums becoming due and payable to the Agency, or Trustee, pursuant to the terms of this Deed of Trust;

(b) Payment of such additional indebtedness, when evidenced by a promissory note or notes reciting the same to be secured by this Deed of Trust, together with interest, as the Agency at its sole discretion may advance to Borrower, or its successor in interest, from time to time and payment or performance of such other obligations as the then record owner of the Property may agree to pay or perform when evidenced by a promissory note or other instrument or agreement reciting that it is secured hereby;

(c) Payment and performance of all covenants and obligations on the part of Borrower under that certain Construction and Term Loan Agreement (“Loan Agreement”) of even date herewith by and between Borrower and Agency; and

(d) Performance and observance of all of the terms, covenants and conditions to be performed or observed by Borrower under this Deed of Trust, and that certain document entitled “California Housing Finance Agency, Regulatory Agreement, CalHFA Development No. _____” (the “Regulatory Agreement”) executed between the Borrower and the Agency and imposed on the Property and all the Loan Documents as such term is defined in such Regulatory Agreement (all of which are the “Secured Obligations”).

The Note provides for an adjustable rate described as the Reset Rate. On each Reset Date, the interest rate under the Note shall be adjusted to equal the Reset Rate as of that Reset Date, subject to the following limitations: (a) the maximum change in the interest rate on any Reset Date is 25 basis points; and (b) the interest rate during the initial term shall not be more than 250 basis points above or below the Initial Interest Rate. “Reset Rate” means 125 basis points plus 90% of the one-month LIBOR as of the third business day preceding the Reset Date, as determined by the Agency in accordance with its usual practices and procedures. “Reset Date” means the first calendar day of each month.

4. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, BORROWER AGREES:

4.1 Maintenance of the Property.

(a) To keep the Property in a decent, safe, sanitary, rentable and tenantable condition and repair and permit no waste thereof;

(b) Not to commit or suffer to be done or exist on or about the Property any condition causing the Property to become less valuable;

(c) Not to construct any buildings or improvements on the Property, other than the buildings and improvements contemplated in the Loan Documents or add to, remove, demolish or structurally alter any buildings and improvements now or hereinafter located on the Property;

(d) To repair, restore or rebuild promptly any buildings or improvements on the Property that may become damaged or be destroyed while subject to the lien of this Deed of Trust;

(e) To comply with all applicable laws, ordinances and governmental regulations affecting the Property or requiring any alteration or improvement thereof, and not to suffer or permit any violations of any such law, ordinance or governmental regulation, nor of any covenant, condition or restriction affecting the Property;

(f) Not to initiate or acquiesce to any change in any zoning or other land use or legal classification which affects any of the Property without the Agency's prior written consent; and

(g) Not to alter the use of all or any part of the Property without the prior written consent of the Agency. The Agency's consent to 4.1(c), (f), and (g) shall not be unreasonably withheld.

4.2 Insurance. To keep the Property insured, with loss payable to the Agency, against loss or damage by fire and such other hazards, casualties and contingencies and by such companies, on such forms and in such amounts as the Agency may from time to time require, and to deliver the original of all such policies to the Agency, together with receipts satisfactory to the Agency evidencing payment of the premiums. All such policies shall provide that the Agency shall be given thirty (30) days advance written notice of the cancellation, expiration or termination of any such policy or any material change in the coverage afforded by it. Renewal policies and any replacement policies, together with premium receipts satisfactory to the Agency, shall be delivered to the Agency at least thirty (30) days prior to the expiration of existing policies. Neither Trustee nor the Agency shall by reason of accepting, rejecting, approving or obtaining insurance incur any liability for the existence, nonexistence, form or legal sufficiency of such insurance, or solvency of any insurer for payment of losses.

Agency has and hereby discloses to Borrower in writing that under Section 2955.5 of the California Civil Code:

“No lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.”

4.3 Payment of Taxes and Utility Charges. To pay, at least ten (10) days prior to delinquency, all taxes and assessments, both general and special, fines, penalties, levies and charges of every type or nature levied upon or assessed against any part of the Property or upon Trustee's or the Agency's interest in the Property. The Borrower shall have the right to contest in good faith any such amounts but in no event shall Borrower allow penalties or other such charges accrue because of late payments.

4.4 Escrow Deposits. At the Agency's option and upon its demand, Borrower shall pay to the Agency each month on the day upon which monthly installments of interest and/or principal are due under the Note, such amount as the Agency from time to time estimates as necessary to create and maintain a fund (the "Fund") from which to pay, before the same become due, the next maturing taxes, assessments, levies, charges and insurance premiums (including any mortgage insurance premiums) on or against the Property. Any excess accumulated in the Fund over the amount required for such purposes shall be held for future use or applied to any indebtedness or obligation hereby secured, or refunded to Borrower, at the Agency's option; any deficiency shall be made up by Borrower on written demand of the Agency. The Agency shall place the amounts in the Fund in an interest bearing account and shall credit the interest earned on such amounts to the Fund semiannually; provided that upon the Fund's termination any interest amount due shall not be payable sooner than six months from the date of the last payment credited to the Fund. Amounts in the Fund shall be released to Borrower for application to or shall be applied by the Agency to payment of such taxes, assessments, levies, charges and insurance premiums, even though subsequent owners of the Property may benefit thereby; provided, however, that in the event of any default under this Deed of

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Trust, all or any part of the Fund may be applied to any indebtedness or obligation hereby secured, in such order and manner as the Agency may determine at its option. Borrower agrees that any conveyance of its interest in the Property shall have the effect of transferring to the grantee all of Borrower's interest in and all its rights to the Fund without further act on the part of Borrower, and that in refunding all or any part of the Fund, the Agency may deal with whoever is represented to be the owner of Borrower's interest in the Property. The collection by the Agency, pursuant to the terms of this paragraph, of monthly installments to cover taxes, assessments, levies, charges and insurance premiums may be suspended or terminated by the Agency at any time upon written notice sent to the owner of the Property, such collection being solely for the added protection and benefit of the Agency and entailing no responsibility on the Agency's part other than to apply sums actually received by it and to pay interest on sums held by it as provided in the Deed of Trust.

4.5 Payment and Discharge of Liens. Borrower will pay, when due, all claims of every kind and nature which might or could become a lien on the Property or any part thereof and will not at any time create or allow to exist any lien on the Property or any part thereof of any kind or nature other than this Deed of Trust; provided, however, that the following are excepted from this prohibition: (a) liens for taxes and assessments which are not delinquent although by law are given the status of a lien; and (b) such of the above claims as are, and only during the time they are, being contested by Borrower in good faith and by appropriate legal proceedings. Borrower shall post security for the payment of these contested claims as may be requested by the Agency.

4.6 Rights of Agency to Remedy Defaults. If Borrower defaults in payment of any tax, assessment, lien, claim, insurance premium, or any other proper charge, in whole or in part, or defaults in the performance of any of the Secured Obligations, the Agency at any time and from time to time, with or without notice to or demand upon Borrower, may make such payments or perform any such acts required of Borrower, to such extent and in any form or manner deemed expedient by the Agency, and pay any other sums, expenses and charges, including attorney's fees, necessary to protect the Property and the lien of this Deed of Trust, without incurring any obligation to do so or releasing Borrower from any obligations and without waiving or curing any default. The Agency shall be the sole judge of the validity, priority, and amount of any such tax, assessment, lien, premium, claim or charge so paid by it and the necessity for the performance by the Agency of any such obligation which Borrower was required but failed to perform. The Agency, at its option, shall be subrogated to any tax, assessment, lien, premium, claim or charge which it has paid under these provisions and any such subrogation rights shall be additional and cumulative security to those set forth in the Secured Obligations.

4.7 Repayment to the Agency. Upon the Agency's payment of any tax, assessment, lien, claim, insurance premium or other charge which Borrower fails to pay or upon the Agency's performance of any obligation which Borrower fails to perform, all as set forth in paragraph 4.6 above, the amount so paid or the cost of performing any such obligation, together with other sums paid or incurred by the Agency, including charges, expenses and attorney's fees relating to or growing out of such default, with interest thereon from date of payment at the rate of ten percent (10%) per annum or, if lesser, the maximum rate permitted by law, shall be paid by Borrower to the Agency upon written demand. For the purposes of this paragraph 4.7, the term ". . . charges, expenses and attorneys' fees relating to or growing out of such default . . ." shall include but not necessarily be limited to the cost of obtaining, after the filing of a notice of default but prior to the foreclosure sale, a "Phase I" environmental site assessment of the Property by a qualified environmental professional and, if warranted in the opinion of such professional, a "Phase II" assessment. The aggregate of all such amounts, including interest, shall be secured by the lien of this Deed of Trust.

4.8 Defense of Actions and Payment of Costs. Borrower shall appear in and defend all actions and proceedings purporting to affect the Property or any right or power of the Agency or Trustee hereunder, provided that the Agency and Trustee, or either of them, may appear in and defend any such action or proceeding and the Agency is authorized to pay, purchase or compromise on behalf of

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Borrower any lien or claim which in its judgment appears to or purports to affect the security of or to be superior to this Deed of Trust. Borrower will pay on demand all sums so expended and all charges, expenses and attorney's fees incurred, with interest from the date of expenditure at ten percent (10%) per annum. Borrower shall give the Agency prompt notice in writing of any of the following which purport to affect the Property: (a) the assertion of any claim, (b) the filing of an action or proceeding, (c) the occurrence of any damage to any of the Property, (d) any condemnation proceeding, and (e) any other material nonmonetary default by Borrower under the Loan Documents.

5. IT IS MUTUALLY AGREED THAT:

5.1 Awards and Damages. All judgments, awards of damages, settlements, compensation and insurance proceeds made in connection with or in lieu of:

(a) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain;

(b) any damage to or destruction of the Property or any part thereof by insured casualty;
and

(c) any other injury or damage to all or any part of the Property, are hereby assigned to and shall be paid to the Agency.

The Agency is authorized and empowered (but not required) to collect and receive any such sums and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Agency shall determine at its option. The Agency shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Agency may be released to Borrower upon such conditions as the Agency may impose for its disposition. Application of all or any part of the amounts collected and received by the Agency or the release thereof shall not cure or waive any default under this Deed of Trust.

Notwithstanding the foregoing, and except as stated below, the Agency shall permit the Borrower to use amounts received as a consequence of any event described in subparagraphs 5.1(a) and 5.1(b) to restore the Property to its condition immediately preceding the event subject to the following conditions: within forty-five (45) days (or such longer period as may be necessary in the Agency's reasonable discretion) after any event described in subparagraphs 5.1(a) or 5.1(b) above, Borrower shall deliver to the Agency, in form and substance reasonably satisfactory to the Agency: (i) a written plan for the repair, restoration or replacement of the Property (any such repair, restoration or replacement being referred to as a "Restoration"); including the estimated cost of the Restoration and schedule of completion; (ii) if requested by the Agency, a copy of the plans and specifications for the Restoration; (iii) a performance bond and labor and material payment bond for the work acceptable to the Agency; (iv) evidence acceptable to the Agency that after completion of the work, the income from the Property will be sufficient to pay all expenses of the Property and to pay and perform all conditions under the Loan Documents; (v) evidence of continuation of leases acceptable to the Agency; (vi) evidence acceptable to the Agency that upon completion of the work, the size, capacity, quality, value and general utility of the Property will be equal to or greater than the condition of the Property before the casualty occurred; (vii) evidence of satisfaction of any additional conditions or requirements that the Agency may establish to protect its security; and (viii) such other documents and information relating to the Restoration as the Agency may request. However, if the Borrower fails to meet any of the conditions listed in this subparagraph, or the amounts received as a consequence of any event described in subparagraphs 5.1(a) and 5.1(b) are insufficient to restore the Property to its condition immediately preceding the event, or if the Agency determines that its security interest in the Property is

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substantially impaired, then the Agency may, in its sole discretion, apply such sums, in whole or in part, to any indebtedness or obligations secured hereby.

5.2 Sales and Encumbrances Prohibited. Except as provided in the Regulatory Agreement, Borrower shall not make any sale, assignment or conveyance, or transfer in any other form, as said terms are defined in the Regulatory Agreement, nor any further pledge, encumbrance or mortgaging, of the Property, or any part thereof or of any of its interest therein, without the prior written consent of the Agency, which consent may be granted or withheld in the sole unfettered discretion of the Agency, and may be conditioned upon the satisfaction of such terms and conditions as the Agency may prescribe. In the event that the Property becomes encumbered by mortgage(s) or deed(s) of trust other than this Deed of Trust, then a default under such other mortgage(s) or deed(s) of trust shall constitute a default under this Deed of Trust.

5.3 Sale or Forbearance. No sale of the Property, forbearances on the part of the Agency or extension of the time for payment of the indebtedness hereby secured shall operate to release, discharge, waive, modify, change or affect the liability of Borrower either in whole or in part.

5.4 Late Payment. The Agency's acceptance of late payment of any sum shall not constitute a waiver of its rights to require prompt payment when due of all other indebtedness, or to declare a default for any failure so to pay, or to proceed with foreclosure or sale for any other default then existing. The Agency's acceptance of partial payment of any sum after default shall not cure such default or affect any notice of default unless such notice of default is expressly revoked in writing by the Agency.

5.5 The Agency's Rights to Release. Without affecting the liability of any person for payment of any indebtedness hereby secured (other than any person released pursuant hereto), including without limitation any one or more endorsers or guarantors, and without affecting the lien hereof upon any of the Property not released pursuant hereto, at any time and from time to time without notice: (a) The Agency may, at its sole discretion, (i) release any person now or hereafter liable for payment of any or all such indebtedness, (ii) extend the time for or agree to alter the terms of payment of any or all of such indebtedness, and (iii) release or accept additional security for such indebtedness, or subordinate the lien or charge hereof; and (b) Trustee, acting pursuant to the written request of the Agency, may reconvey all or any part of the Property, consent to the making of any map or plat thereof, join in granting any easement thereon, or join in any such agreement of extension or subordination.

5.6 Reconveyance. Upon written request of the Agency stating that all sums and obligations secured hereby have been discharged, or otherwise as requested in writing by the Agency, and upon surrender of this Deed of Trust and the Note and any additional loan notes to Trustee for cancellation, and upon payment to Trustee of its fees and expenses, Trustee shall reconvey, without warranty, the Property or that part thereof then held hereunder. The recitals in any reconveyance shall be conclusive proof of their truthfulness and the grantee in any such reconveyance may be described "as the person or persons legally entitled thereto." When the Property has been fully reconveyed, the last such reconveyance shall operate as a reassignment of all of the rents, royalties, issues, accounts and profits of the Property to the person or persons legally entitled thereto unless such reconveyance expressly provides to the contrary.

5.7 Events of Default. Any one or more of the following events shall constitute a default under this Deed of Trust:

(a) Failure of the Borrower to pay the indebtedness secured hereby or any installment thereof, whether principal, interest or otherwise, when and as the same become due and payable, whether at maturity or by acceleration or otherwise; or

(b) Failure of Borrower to observe or to perform any covenant, condition or agreement to be observed or performed by Borrower pursuant to the Secured Obligations; or

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(c) The occurrence of any event which, under the terms of the Secured Obligations, shall entitle the Agency to exercise the rights or remedies thereunder. *[Not in permanent deed of trust: Notwithstanding the foregoing, Borrower (and any limited partner of Borrower on behalf of Borrower) shall have the right to cure any default under this Deed of Trust within the longer of the following: (a) in case of a default in the payment of interest or principal under the Note during the term of the Construction Loan only, within 10 days of notice or within any period provided by statute, whichever is longer; and (b) in case of any default other than failure to pay interest or principal under the Note, within 30 days of written notice or within any period provided by statute, whichever is longer. The foregoing provisions shall not impair Agency's right to file suit for injunctive or other equitable relief in case of any act or omission in violation of any of the Loan Documents when the Agency deems it reasonably necessary to the protection of its collateral.]*

5.8 Acceleration and Sale.

(a) Acceleration. In the event of any default as set forth in paragraph 5.7 above, the Agency, without demand on Borrower, may declare all sums hereby secured immediately due and payable by notice thereof to the Borrower or by executing and recording or by causing the Trustee to execute and record a notice of default and election to cause the Property to be sold to satisfy the obligations secured hereby or by the commencement of an appropriate action to foreclose this Deed of Trust or by any other appropriate manner;

(b) Sale. After delivery to Trustee of a notice of default and demand for sale and after the expiration of such time and the giving of such notice of default and sale as may then be required by law, and without demand on Borrower, Trustee shall sell the Property at the time and place of sale fixed by it in said notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States of America, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Any person, including Borrower, Trustee or the Agency, may purchase at such sale. Upon such sale by Trustee it shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty expressed or implied.

The recitals in such deed of any matters or facts shall be conclusive proof of their truthfulness. Upon sale by Trustee, and after deducting all costs, expenses and fees of Trustee and of this Deed of Trust, Trustee shall apply the proceeds of sale to the payment of the principal indebtedness hereby secured, whether evidenced by the Note or otherwise, or representing advances made or costs or expenses paid or incurred by the Agency under this Deed of Trust, or the Secured Obligations or any other instrument evidencing or securing any indebtedness hereby secured and to the payment of all other sums then secured hereby, including interest as provided in this Deed of Trust, the Secured Obligations or any other such instrument, in such order as the Agency shall direct; and then the remainder, if any, shall be paid to the person or persons legally entitled thereto.

5.9 Entry Possession and Receivership. In the event of any default hereunder and irrespective of whether the Agency accelerates the maturity of all indebtedness secured hereby or files a notice of default hereunder, the Agency at any time, without notice of demand or regard to the adequacy of any security for the indebtedness and obligations hereby secured, in person, or by any agent or employee, or by receiver appointed by court, may enter upon and take the possession of the Property or any part thereof and Borrower agrees to surrender such possession to the Agency, and perform any acts, including the right to rent, lease, operate and maintain any part of all of the Property, which the Agency deems necessary or proper to conserve the Property, and may sue for or otherwise collect and receive all rents, royalties, issues, accounts and profits thereof, including those past due as well as those accruing thereafter. Borrower hereby presently assigns to the Agency, absolutely and regardless of possession of the Property, all rents and other monies now

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due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of all or any part of the Property, now existing or hereafter made, reserving to Borrower only the right, prior to any such default, to collect and retain such rents as they become due, but not otherwise. Borrower shall on demand execute such further assignments to the Agency of any or all such leases, agreements, rents or monies as the Agency may require, and deliver to the Agency a fully executed original of any or all such leases or agreements. The Agency, in person, or by any agent, employee or receiver, may also take possession of, and for these purposes use, any and all of Borrower's personal property contained in or on the Property and used by Borrower in the operation, rental or leasing thereof or any part thereof. The expenses (including, but not limited to, receiver's fees, attorney's fees and agent's compensation) incurred by the Agency pursuant to the power herein contained shall be secured hereby. The Agency may bring or defend any legal action in connection with the Property, as it may deem proper, and may, from time to time, make all necessary or proper repairs, replacements and alterations to the Property, as to it may seem judicious, and may insure and reinsure the same, and may lease the Property or any part or parts thereof in such parcels and for such periods and on such terms as to it may seem fit, including leases for terms expiring after the maturity of the indebtedness hereby secured, and may terminate and lease for any cause which would entitle Borrower to terminate it. After deducting the expenses of managing and operating the same and all maintenance, repairs, replacements and alterations and all payments which may be made for taxes, assessments, liens, claims, insurance premiums, or other proper charges of the Property or any part thereof, including fair and reasonable compensation for attorneys and for agents employed by the Agency to manage and operate the Property, the Agency may apply any and all remaining funds to the payment of the indebtedness hereby secured in such order and proportion as the Agency may determine. Neither application of said amounts to such indebtedness nor any other action taken by the Agency under this subparagraph shall cure or waive any default hereunder or nullify the effect of any such notice of default or invalidate any act done pursuant to such notice or any cause of action to foreclose this Deed of Trust. The right to enter and take possession of the Property, to manage and operate the same, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be in addition to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The Agency shall be liable to account only for such rents, royalties, issues, accounts and profits actually received by it.

5.10 Attorneys' Fees. If Trustee or the Agency shall be made parties to or shall intervene in any action or proceeding affecting the Property or the title thereto or the interest of Trustee or the Agency under this Deed of Trust, or if the Agency employs an attorney to collect any or all of the indebtedness hereby secured or to foreclose this Deed of Trust, or authorizes Trustee to conduct trustee's sale proceedings hereunder, then Trustee and the Agency shall be reimbursed by Borrower, immediately and without demand, for all reasonable costs, charges and attorney's fees incurred by them or either of them in any such case whether or not suit be commenced, and the same, together with interest thereon from the date of payment at the rate of ten percent (10%) per annum or, if lesser, at the maximum rate permitted by law, shall be secured hereby as provided in paragraph 4.7. Notwithstanding any other provision of the secured obligations, in any action to enforce or relating to the secured obligations, the prevailing party shall be entitled to receive from the other party, its reasonable attorneys' fees and costs.

5.11 Exercise of Remedies; Delay. No exercise of any right or remedy by the Agency or Trustee hereunder shall constitute a waiver of any other right or remedy herein contained or provided by law, and no delay by the Agency or Trustee in exercising any such right or remedy hereunder shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder.

5.12 Trustee Substitution. The irrevocable power to appoint a substitute trustee or trustees hereunder is hereby expressly granted to the Agency, to be exercised at any time hereafter, without specifying any reason therefore by filing for record in the office where this Deed of Trust is recorded a deed of appointment, and said power of appointment of successor trustee or trustees may be exercised as often as and whenever the Agency deems advisable. The exercise of said power of appointment, no matter how often,

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shall not be deemed an exhaustion thereof, and upon recording of such deed or deeds of appointment, the trustee or trustees so appointed shall thereupon, without further act or deed of conveyance, succeed to and become fully vested with identically the same title and estate in and to the Property hereby conveyed and with all the rights, powers, trusts and duties of the predecessor in the trust hereunder, with the like effect as if originally named as trustee or as one of the trustees.

5.13 Uniform Commercial Code Security Agreement, Financing Statement and Fixture Filing.

(a) This Deed of Trust is a security agreement and financing statement under the Uniform Commercial Code for the benefit of the Agency as secured party for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants the Agency a security interest in said items. This Deed of Trust is filed as a fixture filing and covers goods which are or are to become fixtures. The address of the Agency (secured party) from which information concerning the security interest may be obtained and the mailing address of Borrower (debtor) are set forth in this Deed of Trust. The types or items of collateral are described in paragraph 1 of this Deed of Trust and/or the Regulatory Agreement. Borrower agrees that the Agency may file any appropriate document in the appropriate index as a financing statement for any of the items specified above as part of the Property. In addition, Borrower agrees to execute and deliver to the Agency, upon the Agency's request, and further authorizes the Agency to file, with or without Borrower's signature, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this instrument in such form as the Agency may require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments, and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements, and releases thereof, as the Agency may reasonably require. Without the prior written consent of the Agency, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto, except as otherwise expressly permitted in the Loan Documents. Upon an acceleration as provided in paragraph 5.8, the Agency shall have the remedies of a secured party under the Uniform Commercial Code and, at the Agency's option, may also invoke the other remedies provided in this Deed of Trust and Loan Documents as to such items. In exercising any of said remedies, the Agency may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of the Agency's rights or remedies under the Uniform Commercial Code or of the other remedies provided in this Deed of Trust, in the Loan Documents, or by law.

Borrower agrees that the filing of any financing statement in the records normally having to do with personal property shall not be construed as derogating in any manner from or impairing this Deed of Trust and the intention of the parties hereto that those portions of the Property herein declared part of the real estate are, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether any such item is physically attached to the improvements or any such item is referred to or reflected in any such financing statement so filed at any time.

(b) Similarly, the mention in any such financing statement of: (i) compensation for damage to or destruction of the Property by insured casualty; or (ii) any judgment, award, or other compensation for a taking of the Property by eminent domain; or (iii) the rents, royalties, issues, accounts and profits of the Property under leases, shall never be construed as impairing in any manner any of the Agency's rights as determined by this Deed of Trust or impugning the priority of the Agency's lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of the Agency in the event that any court or judge shall at any time hold with respect to (i), (ii) or (iii) of this paragraph that notice of the Agency's priority of interest to be effective against a particular class of person,

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including without limitation the federal government or any subdivision or entity thereof, must be filed as provided for in the Uniform Commercial Code.

(c) This Deed of Trust secures an obligation incurred for the construction of improvements on land and is a “construction mortgage” for purposes of the Uniform Commercial Code.

5.14 Remedies Cumulative. No remedy herein contained or conferred upon the Agency or Trustee is intended to be exclusive of any other remedy or remedies afforded by law or by the terms hereof to the Agency or Trustee but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

5.15 Successors, Assigns, Gender, Number. The covenants and agreements herein contained shall bind, and the benefit and advantages shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

5.16 Headings. The headings are inserted only for convenience of reference and in no way define, limit, or describe the scope or intent of this Deed of Trust, or of any particular provision thereof, or the proper construction thereof.

5.17 Actions on Behalf of the Agency. Except as be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request or other action by the Agency is required or permitted under this Deed of Trust, such action shall be in writing.

5.18 Terms. The words “the Agency” means the California Housing Finance Agency, or any future owner or holder, including pledgee, of the indebtedness secured hereby.

5.19 Obligations of Borrower. If more than one person has executed this Deed of Trust as “Borrower,” the obligations of all such persons hereunder shall be joint and several.

5.20 Limitations on Recourse.

(a) While the Construction Loan is outstanding, the Agency shall have full recourse to the Borrower and general partner of the Borrower in addition to any real or personal property security for repayment of the Note.

(b) Upon the Agency’s written acknowledgment of satisfaction of all conditions in the Construction and Term Loan Agreement to conversion of the Construction Loan to a Permanent Loan, including without limitation reduction of the outstanding principal balance to \$_____, the following limitations on recourse shall become effective: Neither the Borrower, nor any partner of the Borrower shall have any direct or indirect personal liability for payment of the principal of, or interest on the Note. The sole recourse of the Agency with respect to the principal of, or interest on, the Note shall be to the property securing the indebtedness evidenced by the Note. No judgment, or execution thereon, entered in any action, legal or equitable, on the Note or the Deed of Trust securing the Note shall be enforced personally against the Borrower or, if the Borrower shall be a partnership, any partner of the Borrower but shall be enforced only against the property described in the Loan Documents and such other or further security as, from time to time, may be hypothecated for the Note; provided, however, that nothing contained in the foregoing limitation of liability shall:

(i) Limit or impair the enforcement against all such security for the Note of all the rights and remedies of the holder thereof; or

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(ii) Be deemed in any way to impair the right of the holder thereof to assert the unpaid principal amount of the Note as a demand for money within the meaning and intentment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto. The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Note; nothing contained therein is intended to relieve the Borrower and, if Borrower is a partnership, any general partner of Borrower of liability for:

(A) Fraud or willful misrepresentation;

(B) The failure to pay taxes, assessments or other charges which may create liens on the real property described in the Loan Documents that are payable or applicable prior to any foreclosure under this Deed of Trust (to the full extent of such taxes, assessments or other charges), except to the extent this provision would result in all or any portion of the indebtedness evidenced by this Note being treated as a recourse liability under Treasury Regulation 1.752-1(a)(1) and 1.752-2, as amended from time-to-time;

(C) The retention of any rental income or other income arising with respect to the Property collected by Borrower after the Agency has given any notice that Borrower is in default to the full extent of the rental income or other income retained and collected by Borrower after the giving of any such notice;

(D) The fair market value as of the time of the giving of any notice referred to in subparagraph (C) above of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Loan Documents after the giving of any notice referred to above;

(E) The misapplication of any proceeds under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; and

(F) Breach of any environmental covenant or representation made by the Borrower relating to the Property.

5.21 Miscellaneous Provisions.

(a) Beneficiary Statement. The Agency shall charge a fee for furnishing the statement in accordance with California Civil Code Section 2943.

(b) Severability. If any provision of this Deed of Trust shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

(c) Indemnification. Borrower will indemnify and hold the Agency, its officers and agents harmless against any and all losses, claims, demands, penalties and liabilities which the Agency, its officers or agents may sustain or suffer by reason of anything done or omitted in good faith pursuant to or in connection with this Deed of Trust and not assert any claim against the Agency, its officers or agents by reason of any action so taken or omitted. Borrower shall, at Borrower's expense, defend, indemnify, save and hold the Agency, its officers and agents harmless from any and all claims, demands, losses, expenses, damages (general, punitive or otherwise), causes of action (whether legal or equitable in nature) asserted by any person, firm, corporation or other entity arising out of this Deed of Trust. Borrower shall pay the Agency upon demand all claims, judgments, damages, losses or expenses (including reasonable legal expense) incurred by the Agency as a result of any legal action arising out of this Deed of Trust. Notwithstanding the

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foregoing, the Borrower shall not be obligated to indemnify the Agency against loss resulting from the gross negligence or willful misconduct of the Agency.

(d) Estoppel Certificate. When requested by the Agency from time to time, the Borrower shall execute an estoppel certificate in favor of the Agency, which certificate shall certify as to the absence of any default by the Agency in the performance of its obligations hereunder or, if any such defaults exist, their existence as of the date of the certificate.

(e) Set-off. Borrower shall not under any circumstances fail or delay to perform (or resist the enforcement of) any of its obligations to the Agency in connection with this Deed of Trust or any other contract, note or instrument executed by Borrower in favor of the Agency because of any alleged offsetting claim or cause of action against the Agency (or any indebtedness or obligation of the Agency) which has not been confirmed in a final judgment of a court of competent jurisdiction (sustained on appeal, if any) against the Agency. Borrower hereby waives any such rights of set-off (or offset) which it might otherwise have with respect to any such claims or causes of action against the Agency or any such obligations or indebtedness of the Agency, unless and until such right of set-off (or offset) is confirmed and liquidated by such final judgment. Borrower further waives any right which it might otherwise have (if any) to require a marshalling of any security of the Agency or to direct the order in which the Agency pursues its rights or remedies with respect to any of its security.

5.22 Priority. This Deed of Trust, regardless of order of recordation, is junior and subordinate to that certain document entitled “California Housing Finance Agency, Regulatory Agreement, CalHFA No. _____” recorded contemporaneously herewith.

5.23 Leasehold Deed of Trust Provisions.

(a) If this Deed of Trust is on a leasehold, Borrower shall comply with the provisions of the lease, and if Borrower acquires fee title to the Property, the leasehold and fee title shall not merge unless Agency agrees to the merger in writing. If all or a portion of the security of this Deed of Trust is a leasehold estate, this Deed of Trust shall be a lien upon all present or future right, title, estate, and interest of Borrower in the real property and improvements covered by the leasehold interest, and upon all property interests acquired by Borrower as a result of the exercise of any option contained in the lease as amended at any time, in the same manner and to the same extent as if the real property encompassed in the lease and option agreements had been held in fee by Borrower at the time of the execution of this Deed of Trust, and Borrower agrees not to amend, change, or modify his leasehold interest, or any of the terms of the leasehold interest, or to exercise any option to purchase, or agree to do so, without the prior written consent of Agency being had and obtained. In the event of a violation of this provision, Agency shall have the right, at its option, to declare all sums secured by this Deed of Trust immediately due and payable, subject to any applicable cure period. Consent to any amendment, change, modification, or a waiver of the right to require such consent in one instance shall not be a waiver of the right to require such consent at a subsequent time. The term “Property,” as used in this Deed of Trust, shall be deemed to mean such leasehold estate or any other present or future interest of the Borrower in the Property whenever the context requires. If this Deed of Trust encumbers both a leasehold interest and a fee interest in the same real property, no provisions in this paragraph shall impair the lien on the fee interest.

(b) Borrower:

(i) Shall comply with the provisions of the lease,

(ii) Shall give immediate written notice to Agency of any default by lessor under the lease or of any notice received by Borrower from such lessor of any default under the lease by Borrower,

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(iii) Shall exercise any option to renew or extend the lease and give written confirmation thereof to Agency within thirty (30) days after such option becomes exercisable,

(iv) Shall give immediate written notice to Agency of the commencement of any remedial proceedings under the lease by any party thereto, and, if required by Agency, shall permit Agency as Borrower's attorney-in-fact to control and act for Borrower in any such remedial proceedings, and

(v) Shall within thirty (30) days after request by Agency obtain from the lessor under the lease and deliver to Agency any required lessor's estoppel certificate.

Borrower expressly transfers and assigns to Agency the benefit of all covenants contained in the lease, whether or not such covenants run with the land, but Agency shall have no liability with respect to such covenant or any other covenants contained in the ground lease.

(c) Borrower shall promptly after obtaining knowledge thereof notify Agency orally of any filing by or against lessor of a petition under the Bankruptcy Code. Borrower shall thereafter forthwith give written notice of such filing to Agency, setting forth any information available to Borrower as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Borrower shall promptly deliver to Agency following receipt any and all notices, summonses, pleadings, applications and other documents received by Borrower in connection with any such petition and any proceedings relating thereto.

(d) The lien of this Deed of Trust attaches to all of Borrower's rights and remedies at any time arising under or pursuant to Section 365(h) of the Bankruptcy Code, including, without limitation, all of Borrower's rights to remain in possession of the mortgaged premises thereunder. Effective upon the entry of an order for relief in respect of the Borrower under Chapter 7 of the Bankruptcy Code, the Borrower hereby assigns and transfers to the Agency a non-exclusive right to apply to the Bankruptcy Court under Section 365(d)(1) of the Bankruptcy Code for an order extending the period during which the lease may be rejected or assumed. Borrower shall not, without Agency's prior written consent, elect to treat the lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made without Agency's prior written consent shall be void.

(e) Borrower hereby unconditionally assigns, transfers and sets over to Agency all of Borrower's claims and rights to the payment of damages arising from any rejection by lessor of the lease under the Bankruptcy Code, 11 U.S.C. § 101 et seq. Agency shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of the lease, including without limitation, the right to file and prosecute to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of lessor under the Bankruptcy Code. This assignment of the foregoing claims, rights and remedies shall continue in effect until all of the indebtedness and obligations secured by this Deed of Trust shall have been satisfied and discharged in full. Any amounts received by Agency as damages arising out of the rejection of the lease shall be applied first to all costs and expenses of Agency (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this paragraph and then in accordance with provisions of this Deed of Trust relating to proceeds.

(f) If pursuant to Section 365(h)(2) of the Bankruptcy Code, Borrower seeks to offset against the rent reserved in the lease the amount of any damages caused by the non-performance by the lessor of any of lessor's obligations under the lease after the rejection by lessor of the lease under the Bankruptcy Code, Borrower shall, prior to effecting such offset, notify the Agency of its intent so to do, setting forth the amounts proposed to be so offset and the basis thereof. Agency shall have the right to object to all or any part of such offset, and, in the event of such objection, Borrower shall not effect any

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offset of the amounts so objected by Agency. If Agency has failed to object within 10 days after notice from Borrower in accordance with the first sentence of this paragraph, Borrower may proceed to effect such offset in the amounts set forth in Borrower's notice. Neither Agency's failure to object nor any objection or other communication between Agency and Borrower relating to such offset shall constitute an approval of any such offset by Agency. Borrower shall indemnify and save Agency harmless from and against any and all claims, demands, actions, suits, proceedings, damages, losses, costs and expenses of every nature whatsoever (including, without limitation, attorneys' fees) arising from or relating to any offset by Borrower against the rent reserved in the lease.

(g) If any action, proceeding, motion or notice shall be commenced or filed in respect of the lease or the mortgaged premises in connection with any case under the Bankruptcy Code which may have the effect of terminating or modifying the lease in a manner adverse to Agency's interests, Agency shall have the option, to the exclusion of Borrower, exercisable upon notice from Agency to Borrower, to conduct and control any such litigation with counsel of Agency's choice. Agency may proceed in its own name or in the name of Borrower in connection with any such litigation, and Borrower agrees to execute any and all powers, authorizations, consents and other documents required by the Agency in connection therewith. Borrower shall, upon demand, pay to Agency all costs and expenses (including attorneys' fees) paid or incurred by Agency in connection with the prosecution or conduct of any such proceedings. Any such costs or expense not paid by Borrower shall be secured by the lien of this Deed of Trust and shall be added to the principal amount of the indebtedness secured hereby. Borrower shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the lease in any such case under the Bankruptcy Code without the prior written consent of Agency.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust on the day and year set forth above. If a mailing address is set forth opposite its signature below, and not otherwise, the Borrower shall be deemed to have requested that a copy of any notice of default and of any notice of sale hereunder be mailed to it at such address.

MAILING ADDRESS FOR NOTICES

provided, that for purposes of all statutory notice requirements under California law, notice to Borrower alone shall be sufficient.

BORROWER

By _____

By: _____

Name: _____

Its: _____

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Exhibit A
Legal Description

ACKNOWLEDGEMENTS

STATE OF CALIFORNIA
COUNTY OF _____

On _____ before me, _____ (*insert the name and title of the officer*), personally appeared _____ (*insert name of signer*), who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/ their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.

(Signature) _____ (Seal)

STATE OF CALIFORNIA
COUNTY OF _____

On _____ before me, _____ (*insert the name and title of the officer*), personally appeared _____ (*insert name of signer*), who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/ their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.

(Signature) _____ (Seal)